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CITY OF CONCORD; CHRISTOPHER BLAKELY; and  
ISIDRO LLANOS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY BREEN, an individual,

Plaintiff,

vs.

CITY OF CONCORD, a municipal  
corporation; CHRISTOPHER BLAKELY  
in his individual and official capacity as a  
police officer for the Concord Police  
Department; ISIDRO LLANOS, in his  
individual and official capacity as a police  
officer for the Concord Police Department;  
and DOES 1-50, inclusive

Case No. C19-05622-SK

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS  
PORTIONS OF PLAINTIFF'S  
COMPLAINT**

Date: December 9, 2019  
Time: 9:30 a.m.  
Dept: Ctrm. C – 15<sup>th</sup> Flr. (San Francisco)  
Judge: Magistrate Judge Sallie Kim

The CITY OF CONCORD, CHRISTOPHER BLAKELY, and ISIDRO LLANOS' (collectively, "Defendants") Motion to Dismiss ("Motion") the Plaintiff's Third Cause of Action ("COA") for municipal liability under *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978) came before this Court. Good cause having been shown and after full consideration of the moving papers and supporting documents, the opposing papers and supporting documents, and after full consideration of all oral arguments made, this Court GRANTS Defendant's Motion, dismissing Plaintiff's Third COA without leave to amend.

**I. LEGAL STANDARD**

A complaint must contain "a short and plain statement of the claim showing the pleader is

entitled to relief.” FRCP 8(a)(2). However, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In considering such a motion, a court must “accept as true all of the factual allegations contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and may dismiss the case or a claim “where there is no cognizable legal theory” or there is an absence of “sufficient factual matter to state a facially plausible claim to relief.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). However, “the tenet that a court must accept a complaint’s allegations as true is inapplicable to legal conclusions unsupported by factual allegations,” as is the case here with Plaintiff’s Complaint. *Cannon v. City of Petaluma*, No. C 11-0651 PJH, 2012 U.S. Dist. LEXIS 49121, at \*48 (N.D. Cal. 2012), citing *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *Iqbal*, 129 S.Ct. at 1949-50 (emphasis added).

Leave to amend should be denied if amendment would be futile. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

## II. DISCUSSION

Defendant moves to dismiss Plaintiff’s Third COA for *Monell* liability, claiming Plaintiff’s conclusory allegations fail to state plausible claims for relief. The Court agrees.

Plaintiff’s *Monell* claim(s) based on a failure to train and unconstitutional custom, practice and/or policy theories, fails for numerous reasons, including that it is predicated solely on the single, isolated, constitutional violation he alleges he suffered. Moreover, Plaintiff has failed to allege specific facts pointing to “a pattern of similar constitutional violations by untrained employees,” as the settlements and other alleged incidents listed do not show CITY has been found to be liable regarding situations similar to that at issue here, for violations similar to those being alleged in this case. As such, Plaintiff has failed to allege or illustrate how CITY would have been on notice that its failure to train, or unconstitutional practice or custom, was the moving force behind the constitutional violations, amounting to an unconstitutional policy or practice. *Board of the County*

1 *Comm'rs v. Brown*, 520 U.S. 397, 409 (1997). In addition, Plaintiff has not alleged specific factual  
2 allegations illustrating any of the essential elements to establish *Monell* liability on either theory,  
3 and has not alleged how the County was the moving force behind his alleged injuries. Plaintiff's  
4 failure to plead such facts is fatal to these claims.

5 Likewise, Plaintiff's *Monell* claim based on a ratification theory also fails for the same  
6 reasons. Here, Plaintiff has not specifically identified a final policymaker who allegedly ratified  
7 any subordinates action, which is fatal to this claim. *Wolniak v. Cty. of Sacramento*, No. 2:17-cv-  
8 01286 KJM AC, 2017 U.S. Dist. LEXIS 211211, at \*8 (E.D. Cal. 2017). Plaintiff has failed to  
9 allege specific factual allegations regarding any of the other essential elements required to allege  
10 *Monell* ratification. In particular, Plaintiff failed to allege how the unidentified policymaker knew  
11 of the alleged constitutional violation(s), and failed to allege that the CITY took some affirmative  
12 action actually approving the constitutional violations (failure to discipline is not a basis). *Lytle v.*  
13 *Carl*, 382 F.3d 978, 987 (9th Cir. 2004). Moreover, Plaintiff did not allege any specific facts  
14 regarding how a post-conduct ratification here caused his constitutional deprivation. *Wolniak*, 2017  
15 U.S. Dist. LEXIS 211211, at \*13, citing *Jones v. Cty. of Sacramento*, No. Civ. 2:09-1025 WBS  
16 DAD, 2010 U.S. Dist. LEXIS 72795 at \*7 (E.D. Cal. 2010). This Court cannot consider the  
17 Plaintiff's conclusory threadbare recitals of buzzword elements. *Cannon v. City of Petaluma*, No.  
18 C 11-0651 PJH, 2012 U.S. Dist. LEXIS 49121, at \*4 (N.D. Cal. 2012).

19 Since Plaintiff would have plead more specific factual allegations regarding these claims if  
20 such specific facts existed, the Court further finds that amendment of Plaintiff's Complaint is futile.

21 **ACCORDINGLY, IT IS HEREBY ORDERED THAT** Defendants' Motion to Dismiss  
22 Portions of Plaintiff's Complaint is GRANTED and Plaintiff's Third COA for *Monell* liability is  
23 dismissed, without leave to amend.

24 **IT IS SO ORDERED.**

25 Dated: \_\_\_\_\_  
26

27 \_\_\_\_\_  
28 Hon. Sallie Kim  
U.S. District Court Magistrate Judge